IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE
Arbitration Application No.142 of 2005

Masood Mohmmed Husain — Applicant
Vs.
Gulam Rasul Mohammedali Sheikh — Respondent

Mr.S.Purohit i/b. Mr.T.A.Purohit for applicant.
Mr.P.Samdani i/b Kishore Thakordas for respondent.

CORAM: B.H.MARLAPALLE,J.

May 05, 2006.

P.C.

. Heard the learned counsel for the respective parties. Based on the partnership deed signed between the parties this application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of sole arbitrator. The respondent has filed his affidavit-in-reply and submitted that the application cannot be entertained as the partnership firm was not registered and he has further relied upon a decision of this Court dated 22/8/2005 in Arbitration Petition No.194 of 2005. Though the said petition was moved under Section 9 of the Act, it was between the same parties and this Court in para 12 noted that the arbitral proceedings themselves were not maintainable as the firm was not registered.

. The learned counsel for the applicant submitted that the decision in Arbitration Petition No.194 of 2005 has been challenged in Arbitration Appeal No.1139 of 2005 and the said appeal has already been admitted. Mere pendency of the appeal would not permit me to entertain this application on the face of the findings recorded by this Court in Arbitration Petition No.194 of 2005 and in any case if the petitioner succeeds in the pending appeal, his remedy to file fresh application under Section 11 of the Act is not taken away by the rejection of this application now.

. Hence the application is rejected on the ground that the is firm not registered, request for constituting an arbitral tribunal cannot be entertained, however, with liberty as is available in law.

(B.H.MARLAPALLE,J.)